

Financial Services Strategy  
HM Treasury  
1 Horse Guards Road  
SW1A 2HQ

8<sup>th</sup> October 2025

To Whom It May Concern,

### **Review of the Financial Ombudsman Service Consultation**

We welcome the opportunity to respond to this consultation. ABCUL is the primary trade association representing credit unions in England, Scotland and Wales with around two thirds of credit unions in mainland Great Britain affiliated to the Association.

Credit unions are co-operative societies that provide financial services – primarily savings and loan facilities – to their member-owners. They are registered as Co-operative Societies under the Co-operatives and Community Benefit Societies Act 2014 and the Credit Unions Act 1979. As deposit-takers, they are dual-regulated by the Prudential Regulation Authority and the Financial Conduct Authority.

Credit unions have since their inception in Britain in 1964 been closely associated with anti-poverty and financial inclusion. They tend to provide savings and loan facilities to those with limited or no access to financial services from mainstream providers, generally due to their low income and/or lack of a developed credit profile. They have been a central element of numerous government and philanthropic initiatives to extend financial inclusion and address the lack of adequate provision of affordable credit and secure savings facilities for large sections of the population. They are capped in the interest that they can charge at 42.6% APR under the Credit Union Act 1979 and provide credit in competition with high-cost lenders.

They are numerous, with over 215 credit unions active in Great Britain today with more than 1.5 million members and £2.7 billion in assets under management. They range from mid-sized businesses of up to 50 staff to small voluntary organisations.

## Consultation Response

ABCUL welcomes the opportunity to respond to HM Treasury's review of the Financial Ombudsman Service.

ABCUL would like to raise a concern regarding the FOS's approach to reviewing credit union complaints, particularly in relation to references made to the CONC sourcebook. While CONC has not been cited as the primary basis for any final decisions, we note that previous correspondence has suggested credit unions should 'comply with the spirit' of CONC as it reflects 'good industry standards'. This raises questions about the appropriateness of applying a regulatory standard that does not formally extend to credit unions, and the potential impact this may have on the sector's bespoke regulatory settlement. Credit unions play a vital role in supporting underserved communities and promoting financial resilience and inclusion, and we are concerned that such an approach could inadvertently undermine this work. We also believe it is important to ensure that the FOS's remit remains clearly aligned with the relevant regulatory boundaries.

If this is an area you would be open to exploring further, we would welcome the opportunity for discussion.

### **Question 1: Do you agree that, where conduct complained of is in scope of FCA rules, compliance with those rules will mean that the FOS is required to find that a firm has acted fairly and reasonably?**

ABCUL notes that when the FOS uses 'fair and reasonable', it can go beyond what the FCA rules require. While we recognise the importance of this principle, we believe that where a firm has acted in accordance with FCA rules and in line with their intended purpose, this

should be reflected in the FOS's conclusions. Increasingly, however, we are concerned that the FOS's approach may be diverging from the FCA's regulatory intent.

We would like to take this opportunity to highlight inconsistencies observed in FOS communications with credit unions subject to complaints. Although final decisions have not explicitly relied on the CONC sourcebook, earlier correspondence has suggested that credit unions should adhere to its principles as a matter of 'good industry practice'. This raises concerns about the appropriateness of applying standards that do not formally apply to the sector.

Such an approach risks undermining the predictability and consistency of the 'fair and reasonable' test, as outlined in Chapter 2 of this consultation paper. It also creates uncertainty for credit unions operating within a bespoke regulatory framework, potentially eroding trust in the system and discouraging compliance. We therefore urge that, in light of previous engagement with both the FOS and FCA, a shared understanding be established regarding the scope of credit union complaints. Misalignment in this area could have unintended consequences for credit unions and other firms acting in good faith within the FCA's framework.

**Question 2: Will the alignment of the Fair and Reasonable test with FCA rules still allow the FOS to continue to play its relatively quick and simple role in resolving complaints between consumers and businesses?**

ABCUL notes that aligning the Fair and Reasonable test with FCA rules may have an impact on its role to relatively quickly and simply resolve complaints between consumers and businesses. Credit unions serve vulnerable members, and flexibility in the complaint handling is important as there are nuances that need to be addressed.

ABCUL also agrees that many of the complaints received by the FOS relate to simple maladministration or poor service, where the FCA rules would not apply – in this context, the current Fair and Reasonable test functions well.

However, aligning the Fair and Reasonable test with FCA rules will provide clearer regulatory certainty and expectations, especially where FCA rules are material to the complaint – if a credit union faces a complaint to the FOS, it can be costly and potentially damaging to its reputation, even if the credit union was compliant with the required FCA rules at the time.

**Question 3: Do you agree with the proposed approach for dealing with the law which may be relevant to a complaint before the FOS?**

ABCUL agrees with the proposed approach for dealing with the law. Complaints can involve areas such as consumer protection law, which may not be addressed by FCA rules. Relevant laws should still be taken into account when deciding what is fair and reasonable, as this can strengthen the fairness of the redress process. Taking into account relevant laws in addition to FCA rules creates a more watertight complaints process, as laws can create legal certainty for consumers and regulators alike. It can also help to maintain a process of consistency and to maintain the FOS's role as a simple dispute resolution service rather than, in recent years, a quasi-regulator.

**Question 4: Do you consider that there are some cases that are not appropriate for the FOS to determine, bearing in mind its purpose as a simple and quick dispute resolution service? How should such cases be dealt with?**

ABCUL supports the approach that looks at available avenues for cases- if a case is not appropriate for the FOS to determine and is more appropriate for the courts to determine, then this should be the approach. ABCUL understands that where a complaint involves complex legal issues especially if points of the law are disputed in FSMA 2000, for example, it would be more appropriate to pursue it through the courts.

**Question 5: Do you agree that there should be a mechanism for the FOS to seek a view from the FCA when it is making an interpretation of what is required by the FCA's rules?**

ABCUL agrees there should be a formal mechanism for the FOS to seek a view from the Financial Conduct Authority. These mechanisms would prove useful as they could provide a defined framework for when the FOS is interpreting what is required by the FCA rules, which could provide the opportunity for predictable and fairer decisions to be made. It may also align with the FCA's regulatory intent and reduce the FOS's unintended role as a quasi-regulator.

Regardless of how this mechanism is implemented, it presents an opportunity to strengthen alignment between the FOS and the FCA—an issue that has become increasingly relevant within the regulatory landscape. This has been a longstanding area of interest for ABCUL and our member credit unions, particularly as outlined in our response to Question 1 regarding the references to CONC rules in communications. Greater clarity and consistency between regulatory bodies would help ensure that credit unions are assessed within the appropriate framework, supporting both regulatory confidence and sector stability.

**Question 6: Do you agree that parties to a complaint should have the ability to request that the FOS seek a view from the FCA on the interpretation of FCA rules where the FCA has not previously given a view?**

Clear interpretations and guidance are essential for credit unions. The ability to request the FCA to provide insights on the interpretation of its rules, particularly when no views have been expressed previously, is valuable for regulatory clarity. This process ensures a consistent interpretation, as once the FOS receives an interpretation from the FCA, it can be applied to other cases involving the relevant FCA rules.

ABCUL welcomes the proposals that once the FCA has given an interpretation, the FOS can apply to other relevant cases. This will help to produce a more transparent and clear redress framework.

**Question 7: Do you agree that parties to a complaint should have the ability to request that the FCA consider whether the issues raised by a case have wider implications for consumers and firms?**

This could create a more inclusive regulatory system. Due to the nature and size of the FCA, it will be unable to be aware of every single issue that might have wider implications for consumers and firms. ABCUL agrees that this process, in allowing firms and consumers to play a part in identifying potential wider implications issues, could help the FCA identify and signpost to the FOS a potential Mass Redress Event, leading to a more effective complaints handling process.

However, this process could slow down the FCA's processes when dealing with complaints. It could have the unintended effect of reducing the effectiveness and efficiency of the regulatory system when dealing with complaints and may run the risk of being overly bureaucratic. There will need to be robust oversight to ensure that neither party is incorrectly utilising this mechanism – it must only be used where necessary.

**Question 8: As part of implementing the proposed referral mechanism, do you think there are any issues which should be considered in order to ensure the mechanism works in the interests of all parties to a complaint?**

ABCUL acknowledges that the need to effectively manage the proposed referral mechanism has already been addressed in the consultation. It is important to closely monitor any potential intentional or unintentional abuse of this mechanism. ABCUL welcomes additional clarity and proposals on how this referral process will be managed effectively.

**Question 9: Do you agree that the Chief Ombudsman should have overall authority for determinations made by FOS ombudsmen, and through that authority, should be responsible for ensuring consistent FOS determinations?**

ABCUL partly agrees with this, whilst the Chief Ombudsman, having overall authority for determinations made by FOS Ombudsmen, could allow for consistent complaint resolution where necessary.

However, ABCUL welcomes the proposal that the Chief Ombudsman will be able to delegate the carrying out of this function to their team working within the FOS only where it provides consistency across FOS determinations. In aligning with the government's overall aim for regulatory certainty and predictable outcomes for consumers and firms, we would urge the Chief Ombudsman and relevant delegated persons to ensure correct interpretation of regulation where necessary, and to consult with regulators to ensure clarity and consistency.

**Question 10: What approach to transparency arrangements would provide the most accessible way for consumers and firms to understand what outcomes to expect for particular types of cases that the FOS deals with?**

ABCUL strongly urges the retention of the FOS's statutory obligation for the FOS to publish each individual determination made by the ombudsman. This provides significant value through the level of transparency it gives to organisations, firms, including trade bodies to further understand and analyse sectoral issues.

It may be more effective for the FOS to continue to publish each determination concurrently with the publishing of a quarterly thematic guidance document. This could provide the value of both high-level thematic guidance and granular case determination information. Sitting alongside the publishing of individual reports would provide the most value.

If guidance documents are published, ABCUL welcomes the requirement for the FOS to seek FCA approval before publishing. ABCUL encourages the FCA and the FOS to further align with each other and for the FOS to further understand relevant FCA standards to ensure there is no dissonance. ABCUL welcomes further transparency on how the FOS has worked with the FCA.

**Question 11: Do you think the package of reforms outlined above, taken together, will be sufficient to address the problems identified by the review and ensure the FOS fulfils its original purpose?**

ABCUL acknowledges that the reforms mentioned above represent progress, but it remains to be seen whether they will be adequate to resolve the issues highlighted in the review and ensure that the FOS meets its original purpose.

**Question 12: Taking into account the other reforms proposed in this consultation, do you think that the FOS should be made a subsidiary of the FCA? If so, what are your views on the appropriate institutional arrangements?**

ABCUL does not believe that the FOS should be made a subsidiary of the FCA. The FOS operates independently and impartially; becoming a subsidiary of the FCA could compromise its operational independence and impartiality.

Further work still needs to be taken to ensure that the FCA and the FOS are greater aligned, we do not believe a subsidiary arrangement would solve this challenge. The FOS and FCA can enhance collaboration and information sharing, without becoming a subsidiary. An exploration into a more robust Memorandum of Understanding between the FCA and FOS could help to bridge the gap between the two.

It is also important to note that the FOS should always gain regulatory clarity from the FCA where it is necessary – FOS interpretation of regulation is becoming an increasingly prominent issue, especially where interpretation of regulation is not aligned with the FCA and FCA rules. A prominent example we have found is the application of CONC sourcebook to credit unions when it is not applicable.

**Question 13: Do you agree that 10 years is an appropriate absolute time limit for complainants to bring a complaint to the FOS?**

ABCUL partly agrees that 10 years is an appropriate absolute time limit for complainants. As mentioned within the consultation, the limit may put credit unions in a difficult position regarding GDPR – credit unions may need to retain personal data for up to 10 years under the new proposals; however, there will also be a need to handle data as required by the General Data Protection Regulations. Many firms would see it to be safer to adhere to GDPR rather than the absolute limit of 10 years.

Firms will not be able to anticipate the data that might be required by the FOS if a complaint is made. This could make it difficult for credit unions to justify the data they retain from the outset. If adopted into law, there should be clarification and granular guidance for firms and credit unions on what constitutes acceptable personal data retention for potential FOS complaints, firms could run the risk of retaining too much information or too little.

**Question 14: Do you agree that the FCA should have the ability to make limited exceptions to this time limit?**

The FCA should have the ability to make limited exceptions to this time limit. Limited exceptions could be made for complaints involving vulnerable customers, for example. Adhering to a strict time limit for all cases could result in unfair outcomes, for example, longer-term deposits or investments that exceed the 10-year absolute time limit threshold.

**Question 15: Do you agree that the FCA should have more flexibility, when investigating a potential MRE, to take steps that are designed to avoid disruption and uncertainty for consumers and firms? In addition to the proposals made above, do you think there are other tools for the FCA which should be considered?**

ABCUL welcomes the proposal that the FCA should have more flexibility to take steps to avoid disruption and uncertainty when investigating a potential MRE. ABCUL agrees that the role of the regulatory framework is to ensure that the FCA can intervene effectively to protect consumers.

**Question 16: Do you agree that there should be a simpler legal test for the FCA to satisfy in deciding that a section 404 redress scheme is needed to respond quickly and effectively to an MRE?**

ABCUL notes that the current legal test for the FCA to satisfy in deciding that a section 404 redress scheme is needed remains robust and effective. Under Section 404 of FSMA 2000, consumer redress scheme conditions of implementing appear sufficient, and a simpler legal test may run the risk of a Section 404 redress scheme being inadvertently overused, especially where other redress mechanisms may prove more effective.

In the consultation, HM Treasury indicates that the Government may consider a section 404 scheme overly complex and unsuitable for certain types of MRE. Other avenues for redress should potentially be explored. The example used in this consultation in Paragraph 4.4.11 highlights 'an MRE could involve a small number of firms or consumers' requiring the FCA to investigate further. In this circumstance, a different redress mechanism may be needed in its entirety to sufficiently provide redress, such as a FOS Lead Complaint Process, if undue delay is seen as a concern.

ABCUL supports the desirability of the FCA to secure redress through other mechanisms before a section 404 redress scheme is needed.

**Question 17: Do you agree that the FCA should be able to direct the FOS to handle complaints consistently with relevant redress schemes, or to direct the FOS to pass related complaints back to firms, to be dealt with by those redress schemes?**

ABCUL supports proposals where complaints can be addressed through the relevant redress scheme, as well as proposed measures to promote consistent approaches to mass redress. ABCUL also supports the idea that the FCA can return complaints to firms if they are already covered by a redress scheme. Furthermore, ABCUL agrees that when complaints received by the FOS are covered by FCA guidance, the FOS should follow that guidance to ensure consistency. We urge the FOS to maintain consistency in its decisions by adhering to FCA guidance on redress schemes.

Please contact us at [advocacy@abcuk.org](mailto:advocacy@abcuk.org) if you have any questions about our response to your consultation.

Kind regards,



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